

Public Adm'r of State of N.Y. v Beth Israel Med. Ctr.
2007 NY Slip Op 31532(U)
May 10, 2007
Supreme Court, New York County
Docket Number: 0104031/2004
Judge: Joan B. Carey
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Honorable Joan B. Carey
Justice

PART 40 D

PUBLIC ADMINISTRATOR OF THE STATE
OF NEW YORK, COUNTY OF NEW YORK,
as Administrator of the Estate of STEVEN
PABAI, deceased,

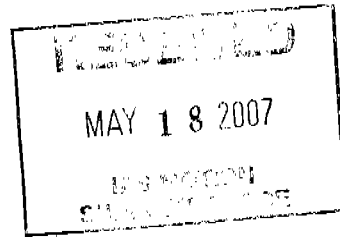
Index No.: 104031/04

Plaintiff,

-v-

BETH ISRAEL MEDICAL CENTER,
NEW YORK HEALTH AND HOSPITALS
CORPORATION, and NEW YORK-
PRESBYTERIAN HOSPITAL/COLUMBIA
PRESBYTERIAN MEDICAL CENTER,

Defendants.



The following papers, 1-18, were read on this motion by defendant New York Presbyterian Hospital s/h/a New York Presbyterian Hospital /Columbia Presbyterian Medical Center for summary judgment dismissing the plaintiff's cause of action for wrongful death.

FILED

MAY 18 2007

NEW YORK
COUNTY CLERK'S OFFICE

Notice of Motion - Affidavits - Exhibits
Answering Affidavits - Exhibits
Reply Affidavit

Papers Numbered

1-12

13-17

18

Cross-Motion: Yes No

The instant medical malpractice action involves allegations concerning defendants' failure to timely and properly treat the decedent, Steven Pabai's, acute lymphoblastic leukemia. It is alleged that defendants' negligence caused the death of plaintiff's decedent on December 17, 2002. Plaintiff commenced an action against defendants Beth Israel Hospital and New York City Health and Hospitals Corporation on March 16, 2004 seeking to recover damages for medical malpractice and wrongful death. Thereafter, on June 2, 2005, plaintiff commenced a separate action against New York Presbyterian Hospital, also seeking to recover damages for medical malpractice and wrongful death. By Order of this Court, dated February 21, 2006, plaintiff's action against New York Presbyterian Hospital was consolidated with plaintiff's action against Beth Israel Hospital and New York City Health and Hospitals Corporation.

M D A F

Defendant New York Presbyterian Hospital presently moves for summary judgment dismissing the plaintiff's cause of action for wrongful death, arguing that it is time-barred. Plaintiff's wrongful death claim is governed by the two year limitations period pursuant to EPTL 5-4.1, which begins to run on the date of death (see EPTL 5-4.1; see also Dunefsky v. Montefiore Hospital Medical Center, 162 AD2d 300 [1st Dept. 1990]; Krowicki v. St. Elizabeth Hospital, 113 AD2d 1023 [4th Dept. 1985]). Plaintiff's wrongful death claim accrued on December 17, 2002, and, thus, the applicable statute of limitations expired two years later on the anniversary date of the death of the plaintiff's decedent, December 17, 2004 (see Evans v. Hawker-Siddeley Aviation, Ltd., 482 F.Supp. 547 [U.S.D.C., S.D.N.Y. 1979]; Marino v. Proch, 258 AD2d 628 [2d Dept. 1999]; Ekas v. City Cab Company of Jamestown, New York, Inc., 203 Misc. 730 [Sup Ct Cattaraugus County 1953]; Siegel, N.Y. Practice §34 [4th Ed. 2005]). Defendant New York Presbyterian Hospital argues that since plaintiff's action as asserted against it was commenced on June 2, 2005, over five (5) months after the two year limitations period expired, the wrongful death cause of action is untimely.

In opposition, plaintiff argues that defendant New York Presbyterian Hospital should be equitably estopped from asserting a statute of limitations defense because its failure to provide plaintiff with medical records relating to the decedent caused a delay in the commencement of the action against New York Presbyterian Hospital. According to plaintiff, decedent's medical records were first requested from New York Presbyterian Hospital on May 24, 2004. Subsequent requests were sent on September 17, 2004 and December 13, 2004. In response to the multiple requests for records, plaintiff received a letter from New York Presbyterian Hospital, dated December 20, 2004, stating that the medical records sought were not available at that time. On April 14, 2005, plaintiff filed an Order To Show Cause seeking to compel the disclosure of the medical records sought from New York Presbyterian Hospital. Following the filing of the aforementioned Order To Show Cause, New York Presbyterian Hospital provided decedent's medical records to plaintiff. Thereafter, on June 2, 2005, plaintiff commenced the action against New York Presbyterian Hospital.

"The principle that [a litigant's] intentional wrongdoing should preclude them from asserting the statute of limitations as an affirmative defense derives from the corollary principle, deeply rooted in our jurisprudence, that no one may take advantage of his or her own wrongdoing." (Kamruddin v. Desmond, 293 AD2d 714 [2d Dept. 2002]; see also Matter of Steyer, 70 NY2d 990 [1988]). Court's have held that equitable estoppel may arise where there "is an unreasonable delay in delivering [medical] records to an attorney consulted in a suspected case of malpractice." (Kamruddin v. Desmond, supra; see also Arbutina v. Sisters of Charity Hospital, 75 AD2d 84 [4th Dept. 1980]). Notwithstanding, in the instant action, the plaintiff has not sufficiently demonstrated that it was the conduct of New York Presbyterian Hospital that prevented it from timely commencing the wrongful death cause of action as against New York Presbyterian Hospital.

Plaintiff first demanded copies of decedent's medical records from New York Presbyterian Hospital in May of 2004, which was only approximately six (6) months prior to the expiration of the two year limitations period set forth by EPTL 5-4.1.¹ Despite the fact that New York

¹ It is noted that plaintiff's counsel was retained well in advance of May 24, 2004, the date on which he first demanded decedent's records from New York Presbyterian Hospital, as he was plaintiff's attorney of record when the action was commenced as against Beth Israel Hospital and New York City Health and Hospitals Corporation on March 16, 2004.

Presbyterian Hospital did not respond to plaintiff's May 2004 demand, or its subsequent demands dated September 17, 2004 and December 13, 2004, plaintiff did not seek the Court's intervention until April of 2005, approximately four (4) months after the expiration of the two year limitations period. Although it appears that New York Presbyterian Hospital delayed in providing plaintiff with decedent's medical records, it was plaintiff's lack of action, when faced with the expiration of the wrongful death statute of limitations, that prevented it from timely commencing the wrongful death cause of action as against New York Presbyterian Hospital (cf. Kamruddin v. Desmond, supra [defendant equitably estopped from asserting a statute of limitations defense where plaintiff demanded medical records ten (10) months prior to the expiration of the applicable statute of limitations and moved, by order to show cause, in a special proceeding to compel production of the subject records two (2) months prior to the expiration of the statute of limitations]).

In addition to plaintiff's failure to timely seek Court intervention in the form of pre-action discovery, plaintiff failed to take advantage of other procedural safeguards available to it pursuant to the CPLR. Despite plaintiff's argument that it could not have commenced the action against New York Presbyterian Hospital until the records were received and reviewed, presumably because of an inability to submit a certificate of merit, as required by CPLR 3012-a, the CPLR permits a medical malpractice action to be commenced without a certificate of merit in situations such as this. Pursuant to CPLR 3012-a (d), if a request has been made by a plaintiff for the records relating to the medical treatment by a defendant and such records have not been provided, plaintiff shall not be required to serve the certificate of merit, as required by CPLR 3012-a, until 90 days after such records have been provided. Moreover, plaintiff could have made an application to the Court, pursuant to CPLR 3012(d), for an extension of time to serve its complaint on New York Presbyterian Hospital, arguing that its "reasonable excuse" for the delay in serving the complaint was its inability to review the New York Presbyterian Hospital records.

To preclude New York Presbyterian Hospital from asserting a statute of limitations defense in this action would reward plaintiff for its lack of diligence in demanding the records at issue and seeking the Court's intervention in the form of pre-action discovery, as well as the failure to avail itself of the procedural safeguards addressed above. Accordingly, New York Presbyterian Hospital's motion is granted and plaintiff's wrongful death cause of action, as asserted against New York Presbyterian Hospital, is dismissed.

Based on the foregoing, it is hereby

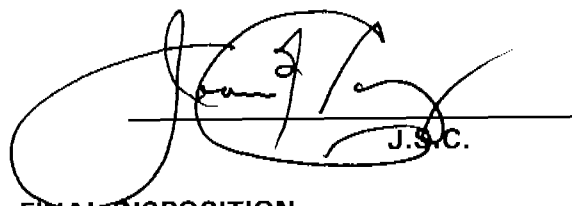
ORDERED that the defendant New York Presbyterian Hospital's motion for summary judgment dismissing plaintiff's wrongful death cause of action as time-barred complaint is granted; and it is further,

ORDERED that plaintiff's second cause of action is dismissed as against New York Presbyterian Hospital only; and it is further

ORDERED that the remainder of the action shall continue; and it is further

ORDERED that counsel for all parties are to appear before the court on June 5, 2007, at 9:30am, at 100 Centre Street, room 1306, Part 40D, for jury selection.

Dated: 5/10/2007



J.S.C.

Check one: FINAL DISPOSITION

NON- FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

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